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UNITED STATES DISTRICT COURT
[NORTHERN] DISTRICT OF NEVADA

DREW RIBAR,

Plaintiff,

Case No. 3:24-cv-00526

v.

WASHOE COUNTY, NEVADA; WASHOE
COUNTY LIBRARY SYSTEM; BUILD OUR
CENTER, INC.; JEFF SCOTT; STACY
MCKENZIE; JONNICA BOWEN; LIBRARY
EMPLOYEE DOE # 1; JENNIFER COLE;
DEPUTY C. ROTHKIN (Badge No. 4696);
DEPUTY R. SAPIDA (Badge No. 4663); SGT.
GEORGE GOMEZ (Badge No. 4066); and
JOHN/JANE DOES 1-10;

Defendants.

**DEFENDANT
BUILD OUR CENTER'S
MOTION TO DISMISS**

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Build Our Center Inc. respectfully requests the Court dismiss Plaintiff Drew Ribar's ("Mr. Ribar") Complaint for failure to state a claim upon which relief can be granted.

This motion is made and based upon all records and pleadings on file herein, the Declaration of Stacy Spain, together with every exhibit attached hereto (each of which is incorporated herein by this reference), as well as the points and authorities set forth directly below.

In support of this Motion, Build Our Center states as follows:

PRELIMINARY STATEMENT

Build Our Center is a Nevada nonprofit corporation that provides a safe, empowering, and supportive center for the Northern Nevada LGBTQ+ community by proving community building, arts and culture programming, and inclusive activities. See Declaration of Stacey Spain ¶3, attached hereto as "**Exhibit 1.**"

1 Build Our Center is not, however, Washoe County, the City of Reno, the State of
 2 Nevada, the Washoe County Library (the “Library”), or a local government
 3 agency. *Id.* at ¶4. Whatever complaints Mr. Ribar has against the other named
 4 Defendants are not attributable to Build Our Center.

5 Further, Mr. Ribar’s Complaint is solely directed at the other named
 6 Defendants. Indeed, there are no factual allegations that Build Our Center, in
 7 any capacity, denied Mr. Ribar access to Drag Queen Story hour, assaulted him,
 8 or blocked his access to the Library’s Facebook page. Candidly, Build Our Center
 9 is at a total loss as to what alleged misconduct it has engaged in that would
 10 create any liability for Mr. Ribar to seek legal action.

11 Mr. Ribar’s Complaint should be dismissed in its entirety against Build
 12 Our Center. Additionally, Build Our Center respectfully requests an award of
 13 reasonable attorneys’ fees and costs incurred by Build Our Center with bringing
 14 this Motion against Mr. Ribar.

15 **BRIEF FACTUAL BACKGROUND**

16 **1. Build Our Center is a Nevada Nonprofit Organization Not a** 17 **Government Entity.**

18 Build Our Center, a small Nevada Nonprofit, was founded in 2009 when
 19 locals started fundraising to establish a LGBTQIA+ community center in Reno,
 20 Nevada. Ex. 1 ¶ 5. After several years of active fundraising, Build Our Center
 21 opened a community center to support a variety of programs for LGBTQIA+
 22 locals. *Id.* at ¶ 6. Build Our Center hosts the yearly Northern Nevada Pride
 23 Festival, and the center offers a full calendar of community meetings and events.
 24 *Id.* at ¶ 7. Additionally, the center also offers drug and alcohol prevention,
 25 recovery, and mental health services. *Id.* at ¶ 8. Build Our Center hosts a variety
 26 of programs and events such as Senior Coffee Time, Out and Sober AA meetings,
 27 Women Encouraging Women (Al-Anon), Queer Student Union, Knit Happens,
 28 and a book and writing club. *Id.* at ¶ 9.

1 Build Our Center was not hired by the City of Reno, Washoe County, or
2 the State of Nevada (collectively referred to herein as the “Government”) to host
3 the Washoe County Library’s Drag Queen Story Hour. *Id.* at ¶ 10. Build Our
4 Center was not hired by the Government to police any government events or Drag
5 Queen Story Hour. *Id.* at ¶ 11. Build Our Center was not hired or given authority
6 by the Government to ensure participants’ safety at Drag Queen Story Hour. *Id.*
7 at ¶ 12. Build Our Center does not hold elections, govern any aspect of the
8 Government, or control a company town. *Id.* at ¶ 13. Build Our Center does not
9 have authority to determine who may have access to Library events. *Id.* at ¶ 14.
10 Build Our Center does not have authority to ban citizens from any Government
11 property or buildings. *Id.* at ¶ 15. Build Our Center does not have authority to
12 remove citizens from any Government property or buildings. *Id.* at ¶ 16. Build
13 Our Center does not have authority to demand the identification of citizens at
14 Government events. *Id.* at ¶ 17. Build Our Center does not have authority to
15 impose restrictions on citizens on Government property or in Government
16 buildings. *Id.* at ¶ 18. Build Our Center has no authority to determine who is
17 blocked from the Library’s social media. *Id.* at ¶ 19. In short, and at all relevant
18 times herein, the Government did not delegate any authority to Build Our
19 Center. *Id.* at ¶ 20.

20 Furthermore, Build Our Center did not assault Mr. Ribar. *Id.* at ¶ 21. Build
21 Our Center did not restrict Mr. Ribar from any Library or other Government
22 events. *Id.* at ¶ 22. Build Our Center did not ban or remove Mr. Ribar from the
23 Library or any other government property or buildings. *Id.* at ¶ 23. Build Our
24 Center did not demand to see Mr. Ribar’s identification. *Id.* at ¶ 24. Build Our
25 Center did not impose any restrictions on Mr. Ribar at any government events.
26 *Id.* at ¶ 25. Build Our Center did not block Mr. Ribar from the Library’s social
27 media. *Id.* at ¶ 26. At all relevant times herein, Build Our Center did not assert
28 authority as an arm of the Government over Mr. Ribar. *Id.* at ¶ 27.

**2. Mr. Ribar’s Complaint Contains One Conclusory Statement
as to Build Our Center.**

Mr. Ribar’s Complaint alleges he is an “independent journalist” to “redress violations of his constitutional rights, including the First, Fourth, and Fourteenth Amendments.” Complaint at 1:22-24. Allegedly, “Defendants unlawfully restricted Plaintiff’s access to public library spaces, retaliated against him for engaging in First Amendment activities, imposed unconstitutional restrictions, improperly demanded his identification without reasonable suspicion, and failed to provide procedural safeguards, resulting in harm.” *Id.* at 1:25-2:3. Purportedly, over the course of a year or so, Mr. Ribar was, among other things, denied access to the Library’s Drag Queen Story Hour, assaulted by a Library employee, blocked from the Library’s social media page, and “barred from accessing library services for one year without notice or an opportunity to contest the restriction.” *Id.* at 4-6.

According to Mr. Ribar, Build Our Center “collaborated with the Library System to organize events and acted in joint participation with state actors.” *Id.* at 3:7-9. However, taking all well-pled facts as true, *how* Build Our Center acted in joint participation with the other named Defendants—other than purportedly “collaborating” to organize events is unclear—this one statement is conclusory. Indeed, the remainder of the Complaint is devoid of any factual allegations as to Build Our Center’s alleged participation in Mr. Ribar’s purported Constitutional deprivations.

LEGAL STANDARD

Fed. R. Civ. P. Rule 8(a)(2) requires a complaint include “a short and plain statement of the claim showing that the pleader is entitled to relief.” A court may dismiss a complaint if it fails to state a claim upon which relief can be granted. FRCP Rule 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, the complaint must contain sufficient facts which, if accepted as true, will state a claim of relief

that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009). “A claim has facial plausibility when its factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Kelsey K. v. NFL Enterprises, LLC*, 254 F. Supp. 3d 1140, 1143 (N.D. Cal. 2017), *aff’d*, 757 Fed. Appx. 524 (9th Cir. 2018) (citing *Ashcroft* at 678, 1937, 868). “While all allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.” *Id.* A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976).

MEMORANDUM OF LAW

1. Mr. Ribar’s Complaint Contains No Facts to Support a Cognizable Legal Theory Against Build Our Center.

Although the pleading standard under Rule 8 is generous, it nonetheless requires a complaint to plead *some* facts that would entitle the plaintiff to relief. A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). A court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged. *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).

Here, Mr. Ribar’s Complaint is conclusory and fails to set forth even the slightest recitation of the basic events and circumstances of Build Our Center’s alleged misconduct. That Build Our Center purportedly “collaborated with the

1 Library System to organize events and acted in joint participation with state
 2 actors” does not satisfy the applicable pleading standard. Mr. Ribar’s Complaint
 3 is severely deficient as to his claims against Build Our Center and should be
 4 dismissed.

5 **2. Mr. Ribar’s Complaint is Devoid of Factual Allegations that**
 6 **Build Our Center is a State Actor.**

7 To sustain an action under 42 U.S.C. § 1983, Mr. Ribar must set forth
 8 factual allegations that “(1) the conduct complained of was committed by a
 9 person acting under the color of state law; and (2) that the conduct deprived the
 10 plaintiff of a constitutional right.” *Balistreri*, 901 F.2d at 699. “State action may
 11 be found if, though only if, there is such a close nexus between the State and
 12 the challenged action that seemingly private behavior may be fairly treated as
 13 that of the State itself.” *Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002) (internal
 14 quotation marks and alterations omitted); *see also Lugar v. Edmondson Oil Co.,*
 15 *Inc.*, 102 S. Ct. 2744, 2753-54 (1982) (To qualify as acting under the color of
 16 state law “the deprivation must be caused by the exercise of some right or
 17 privilege created by the State ... or by a person for whom the State is responsible,”
 18 and “the party charged with the deprivation must be a person who may fairly be
 19 said to be a state actor.”)

20 Here, there are no factual allegations that Build Our Center is a state actor.
 21 Build Our Center is a nonprofit organization and not a government entity. The
 22 Center’s primary purpose is to provide a safe, empowering, and supportive center
 23 for the Northern Nevada LGBTQ+ community by proving community building,
 24 arts and culture programming, and inclusive activities, activities which are not
 25 traditionally or exclusively governmental. *See Children's Health Def. v. Meta*
 26 *Platforms, Inc.*, 112 F.4th 742, 754 (9th Cir. 2024); *Manhattan Cmty. Access*
 27 *Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019) (quoting *Jackson v. Metropolitan*
 28 *Edison Co.*, 419 U.S. 345, 352, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974)); Ex. 1 ¶3-

28. Build Our Center’s activities are separate and distinct from the Government. It hosts events at its community center unrelated to any legislation or Government mandates. Ex. 1 ¶3-28; *Tsao v. Desert Palace*, 698 F.3d 1128, 1140 (9th Cir. 2012) (a private party may be a state actor where the “state has so far insinuated itself into a position of interdependence with the private entity that the private entity must be recognized as a joint participant in the challenged activity.”). Additionally, the Government did not grant governmental authority to Build Our Center, nor did it compel or encourage Build Our Center to perform any of the alleged misconduct against Mr. Ribar. Ex.1 ¶10-28; *Children's Health Def.*, 112 F.4th at 754 (“A private party may be considered a state actor if it has acted because the government coerced or compelled it to do so.”); *Roberts v. AT&T Mobility LLC*, 877 F.3d 833, 842 (9th Cir. 2017) (whether a close nexus exists depends on whether there is overt state encouragement, endorsement, and participation of the private action); *see also O'Handley v. Padilla*, 579 F.Supp.3d 1163 (2022).

Ultimately, there are **no facts** alleging Build Our Center caused the alleged misconduct against Mr. Ribar. Therefore, the Complaint must be dismissed against Build Our Center for failure to state a claim on which relief can be granted.

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CONCLUSION

Simply stated, Mr. Ribar's Complaint is utterly devoid of any factual allegations to survive a motion to dismiss. He has failed (and will not be able) to set forth any factual allegations that Build Our Center was acting under the color of state law. Therefore, Build Our Center respectfully requests the Court dismiss his Complaint in its entirety as to Build Our Center. Build Our Center also respectfully requests an award of reasonable attorneys' fees and costs incurred by Build Our Center in connection with bringing this Motion against Mr. Ribar.

A Proposed Order Granting Build Our Center's Motion to Dismiss is attached hereto as "**Exhibit 2**".

DATED December 30, 2024. SIERRA CREST BUSINESS LAW GROUP

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 Counsel for Defendant BUILD OUR CENTER

CERTIFICATE OF SERVICE

I certify that I am an employee of the SIERRA CREST BUSINESS LAW GROUP who, on the below-written date, caused a true copy of the foregoing to be transmitted via email and also to be filed using the above-entitled Court's electronic filing (CM/ECF) system (which will automatically e-serve the same) on the person(s) and/or entity(ies) set forth directly below:

Drew Ribar

480 Pershing Lane, Washoe Valley, NV 89704
(775) 223-7899
const2audit@gmail.com
Plaintiff in propria persona

Michael W. Large, Esq.

DEPUTY DISTRICT ATTORNEY
One South Sierra Street Reno, NV 89501
mlarge@da.washoecounty.gov
(775) 337-5700
Counsel for Plaintiffs Washoe County and its Library System, Jeff Scott, Stacy Mckenzie, Jonnica Bowen, Jennifer Cole; Deputy C. Rothkin, Deputy R. Sapida, and Sgt. George Gomez

DATED: December 30, 2024.



an employee of the
SIERRA CREST BUSINESS LAW GROUP

INDEX OF EXHIBITS

to

DEFENDANT BUILD OUR CENTER’S
MOTION TO DISMISS

re

Ribar vs. Washoe County, et alia
(Case No. 3:24-cv-00526)

Exhibit No.	Exhibit Description	Pages (+ Cover)
1.	Declaration of Stacey Spain	1
2.	Proposed Order	3